IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2507 OF 1993

1. Damodar Gulabrai Belani,

2. Shrichand Gulabrai Belani,

Both residing at
"Rajnigandha Apartments",
Kataria Marg, Mahim,
Bombay - 400 016 .. Petitioners.

V/s.

1. S.C. Prasad,

2. W. Hasan,

3. C.M. Betgari,
All Members of the Appropriate
Authority constituted under
Chapter XXC of the Income-tax
Act, 1961 and having their
office at Third Floor, Mittal
Court, "A" Wing, Nariman Point,
Bombay - 400 021.

4. Union of India,

5. Carlton Properties Private
Limited, a company incorporated
under the Companies' Act, 1956
having its registered office at
A.N. House, 31st Road, Bandra,
Bombay - 400 050.

6. Sardar Bhupendar Singh Sethi,
residing at Sethi House,
181, Shahid Bhagat Singh
Co-operative Hsg. Soc. Ltd.,
Andheri-Kurla Road, Andheri (E),
Bombay - 400 059.

7. Sardar Harbansingh Kohli,
residing at 5, 'Silver Bands',
Juhu Tara Road,
Bombay 400 059 .. Respondents.

Mr.Poras Kaka with Mr.Sanjiv Ahuja for the petitioners.

Mr.R. Ashokan for respondent Nos.1 to 3.

Mr.J.D. Mistry with Mr.Bhavik Mehta i/by Dhruve Liladhar & Co. for respondent No.5.

Mr.Jitendra Jain i/by S. Satpute for respondent No.7.

WITH

WRIT PETITION NO.2157 OF 1993

1. Carlton Properties Pvt.Ltd.,
   a company incorporated under
   the Companies Act, 1956
   having its registered office
   at A.N. house, 31st Road,
   Bandra, Bombay - 400 050

2. Mr.Anand D. Lodha, a share-
   holder and director of the
   abovenamed company residing
   at Blue Haven, Mount Pleasent
   Road, Bombay - 400 006. .. Petitioners.

V/s.

1. S.C. Prasad,

2. W. Hasan,

3. C.M. Betgari,
   All Members of the Appropriate
   Authority constituted under
   Chapter XXC of the Income-tax
   Act, 1961 and having their
   office at Third Floor, Mittal
   Court, "A" Wing, Nariman Point,
   Bombay - 400 021.

4. Union of India,

5. (i) Damodar Gulabrai Belani,
   (ii)Shrichand Gulabrai Belani,
   Both residing at
   "Rajnigandha Apartments",
   Kataria Marg, Mahim,
   Bombay - 400 016

6. Sardar Bhupendar Singh Sethi,
   residing at Sethi House,
   181, Shahid Bhagat Singh
   Co-operative Hsg. Soc. Ltd.,

Andheri-Kurla Road, Andheri (E),
Bombay - 400 059.

7. Sardar Harbansingh Kohli,
residing at 5, 'Silver Bands',
Juhu Tara Road,
Bombay 400 059 .. Respondents.

Mr.J.D. Mistry with Mr.Bhavik Mehta i/by Dhruv Liladhar & Co. for the petitioner.

Mr.Poras Kaka with Sanjiv Ahuja fr respndent Ns.5(i) & (ii).

Mr.R. Askan for respondent Nos.1 to 3.

Mr.Jitendra Jain i/by Shaunak Satpute for respondent No.7.

WITH

WRIT PETITION NO.2160 OF 1993

Sardar Harbans Singh Kohli,
an Indian Inhabitant,
residing at 5, Silver Sands,
Juhu Tara Road,
Bombay - 400 049 ... Petitioner.

V/s.

1. S.C. Prasad, Chief Engineer

2. W. Hasan, Commissioner of
Income-tax,

3. C.M. Betgari, Commissioner
of Income Tax, being the
Members of the Appropriate
Authority constituted under
Chapter XXC of the Income-tax
Act, 1961 and having their
office at Third Floor, Mittal
Court, "A" Wing, Nariman Point,
Bombay - 400 021.

4. Union of India,

5. Damodar Gulabrai Belani,
of Bombay, Indian Inhabitant,
residing at Rajnigandha
Apartments, Kataria Marg,
Mahim, Bombay - 400 016.

6. Shrichand Gulabrai Belani,
of Bombay, Indian Inhabitant,
residing at Rajnigandha
Apartments, Kataria Marg,
Mahim, Bombay - 400 016.

7. Sardar Bhupendar Singh Sethi,
residing at Sethi House,
181, Shahid Bhagat Singh
Co-operative Hsg. Soc. Ltd.,
Andheri-Kurla Road, Andheri (E),
Bombay - 400 059.

8. M/s.Carlton Properties Private
Limited, a company incorporated
under the Companies' Act, 1956
having its registered office at
A.N. House, 31st Road, Bandra,
Bombay - 400 050. ... Respondents.

Mr.Porus Kaka with Sanjiv Ahuja for the petitioner.

Mr.J.D. Mistry with Mr.Bhavik Mehta i/by Dhruv Liladhar & Co. for respondent No.8.

Mr.R. Ashokan for respondent Nos.1 to 3.

Mr.Jitendra Jain i/by Shaunak Satpute & Co. for respondent No.7.

CORAM : F.I. REBELLO &
J.P. DEVADHAR, JJ.

RESERVED ON : 22ND AUGUST, 2007.
PRONOUNCED ON : 18TH OCTOBER, 2007.

ORAL JUDGMENT : (Per F.I. Rebello, J.)

1. The petitioners in Writ Petition No.2507 of 1993 were the owners of property bearing Plot No.60, Survey No.85, C.S. No.1362, 1362/1 to 1362/8 admeasuring 1819.41 square metres together with bungalow and outhouse situated at Versova, Andheri (West), Bombay - 400 058 (hereinafter will be referred to 'as the property'). These petitioners

will hereinafter be referred to as ‘the owners’.

2. The owners entered into an agreement dated 13th June, 1983 with one Sardar Bhupender Singh Sethi and Sardar Harbanssingh Kohli (hereinafter be referred to ‘as the first purchasers’). By the agreement, the petitioners agreed to sell to the first purchasers the property with the structures existing thereon. By a supplementary agreement entered into on 24th September, 1986, it was agreed that the owners would be liable get vacant possession of the premises in occupation of G.K. Makhijani. The owners and the first purchasers applied to the Appropriate Authority for no-objection certificate in respect of the agreement dated 13th June, 1983 under Chapter XX-A of the Income Tax Act. By an order dated 24th February, 1987, the Competent Authority certified that it has no objection to the transfer of the said property. Subsequent to the agreement, one of the first purchasers (Sardar Bhupender Singh Sethi) succeeded in getting vacant possession from five tenants after litigation. The owners, thereafter by an agreement dated 11th June, 1993 agreed to sell the property to M/s.Carlton Properties Private Limited (hereinafter to be referred to ‘as the second purchaser). The first purchasers were parties to the said agreement

as confirming parties. The main terms of the agreement, according to the owners, are as under :

i) Respondent No.5 (second purchaser) will be liable to pay Rs.46,00,000/- to the petitioners (owners).

ii) Respondent No.5 (second purchaser) will pay Rs.46,00,000/- to Sardar Harbans Singh Kohli (one of the first purchasers) in full and final settlement of his claim right title and interest in the said property pursuant to the agreement dated 13th June, 1983 and supplementary agreement dated 24th September, 1986.

iii) The confirming party i.e. respondent No.6 (Sardar Bhupender Singh Sethi) one of the first purchasers would receive a sum of Rs.63,00,000/- in full and final settlement of all his right title and interest in the said property, including the High Court Suits filed by him. Out of the said sum, the claim of M/s.Harsiddh Corporation bearing O.O.C.J. Suit No.3849 of 1989 had to be settled.

. There are various other clauses in the agreement, which need not be reproduced, except clause 11 which reads as under :

> 11. The balance of the consideration after deducting the earnest money as payable to the Vendors, Assignor and the Confirming Party, the balance consideration amount less amount mentioned in Clause IV hereinafter shall be paid to the said Mr.S.C. Belani, the said Mr.D.C. Belani and the said Mr.B.S. Sethi and the said Mr.H.S. Kohli on :
>
> i) Receipt of Order under 269 UD from the Income Tax authorities,
>
> ii) Settling of differences, disputes, claims and withdraw of all suits pending in Courts.
>
> iii) On handing over possession of the entire property as mentioned in Clause 4 hereinafter,
>
> iv) Out of the total amount payable to the parties concerned, off
>
> a) a sum of Rs.50,000/- (Rupees thousand only) payable to the said Mr.S.C. Belani.
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> b) a sum of Rs.50,000/- (Rupees Fifty Thousand only) payable to the D.G. Belani.
>
> c) a sum of Rs.1,00,000/- (Rupees One Lakh only) payable to the Assignor Mr.B.S. Sethi, and
>
> d) a sum of Rs.1,00,000/- (Rupees One Lakh only) payable to the Confirming Party Mr.H.S. Kohli, shall be deducted from the amounts payable."

3. On 15th June, 1993, the owners, first purchasers and second purchasers filed Form No.37-I

with the Appropriate Authority. On 29th July, 1993, according to the petitioners, the District Valuation Officer submitted a report on the valuation of the said property. Respondent Nos.1 to 3 - Members of Appropriate Authority, inspected the property on 24th August, 1993. On 2nd September, 1993, the owners received the show cause notice dated 27th August, 1993 calling upon them to show cause why the property may not be acquired under Chapter XXC of the Income Tax Act. In the show cause notice, it was stated that the owners may appear before the Appropriate Authority on 14th September, 1993. Reference was made to the agreement dated 11th June, 1993 filed with Form No.37-I. Reference was also made to three sale instances. Based on the F.S.I. available and taking the consideration payable, the rate was worked out at Rs.1,356/- per square foot. Taking the valuation done by the Valuation Officer, it was observed that there is significant undervaluation of the property. It was further mentioned that the consideration payable by the Government works out to Rs.1,52,62,560/-. The other contentions need not be referred to.

4. The owners, on 14th September, 1993, appeared before the Appropriate Authority along with the representative of the second purchaser and made

their submissions, as also submitted written submissions on 1st September, 1993. It was inter alia contended that there were factual errors in the report of the District Valuation Officer in calculating the net F.S.I. It was pointed out that the mistakes were dealt with in detail in the report of M/s.K.G. Kapadia & Co., Architects and Valuers. The method by which the value of F.S.I. was to be calculated was set out. In terms of this valuation of F.S.I., the rate had to be determined at Rs.2,230/- per square foot taking into consideration the cost of construction, other overheads and realisable scrap value of the existing structure. On 18th September, 1983, the District Valuation Officer visited the said property for the purpose of re-measuring the area of the existing structure on the plot. By letter dated 18th September, 1993, the owners and second purchaser and one of the first purchasers filed their submissions.

5. An order dated 22nd September, 1993 came to be passed by the Appropriate Authority under Section 269-UD of the Income Tax Act and was received by the owners on 22nd October, 1993. Order was also served on the other parties referred to in the notice. The Respondent No.1 came to the conclusion that the fair market value should be atleast Rs.1,95,00,000/-

(excluding the cost of construction for settling tenants / occupants and the two Vendors as worked out in para 4 of the order. Thus, it was submitted it works out to Rs.1658 per sq. ft which is in excess of the 15% margin prescribed in C.B. Gautam V/s. Union of India. Respondent Nos.1 to 3 noted the apparent consideration to be Rs.1,55,00,000/- and after deducting Rs.15,00,000/- already paid by the respondent Nos.5, 6 and 7 worked out balance amount to be Rs.1,40,00,000/- and the deferred value as Rs.1,37,62,560/-. The consideration payable by the Central Government was worked out to Rs.1,52,62,560/- to the parties as per the conditions in the above mentioned agreement dated 11th June, 1993 being Exhibit "E" to the Writ Petition. It may be mentioned that in the order the appropriate authority noted that the confirming party (First purchaser) had made a claim of Rs.96,00,000/- and by a subsequent letter informed that the purchaser have accepted the claim of Rs.96,00,000/-. To the application in Form No.38-I, the agreement of June 11, 1993 was annexed.

. On receipt of the order dated 22nd September, 1993, the owners by their letter dated 15th October, 1993 requested the Respondent Nos.1 to 3 not to take any further steps as the owners

desired to challenge the said order. Respondent Nos.1 to 3 informed the owners and the second purchaser that as no order has been passed by the Court, Respondent Nos.1 to 3 will be taking possession of the premises by force on 22nd October, 1993 which was received on 22nd October, 1993. By letter dated 25th October, 1993 the owners were informed that Respondent Nos.1 to 3 had taken possession of the property excluding the area occupied by the nine tenants. Respondent Nos.1 to 3 also approved the discounted value, stating that this method had been confirmed by the decision of the Bombay High Court in the case of Bimladevi Maheshwari Vs. Union of India vide order dated 10th March, 1993 in Writ Petition No.514 of 1993.

6. In this petition and other companion petitions, Damodar Gulabrai Belani and Shrichand Gulabrai Belani will be referred to as the owners. Sardar Bhupender Singh Sethi and Sardar Harbans Singh Kohli will be referred to as the first purchasers and M/s.Carlton Properties Private Limited will be referred to as the second purchaser.

7. Writ Petition No.2157 of 1993 has been filed by the second purchaser. The facts are the same or similar as set out in Writ Petition No.2507 of 1993.

. Writ Petition No.2160 of 1993 is filed by one of the first purchasers Sardar Harbans Singh Kohli. This petition also challenges the order under Section 269-UD of the Income Tax Act directing purchase of the property at apparent consideration of Rs.1,52,62,560/-. This first purchaser claims right pursuant to the agreement dated 13th June, 1983 and the supplementary agreement dated 24th September, 1986 with the owner. It is also pointed out that Sardar Bhupender Singh Sethi by a writing dated 7th November, 1986 agreed to assign his share and right, title and interest in the said property as also in the said agreement and supplementary agreement in favour of this petitioner [Sardar Harbans Singh Kohli]. As the petitioner alone held the rights of development, Petitioners entered into a Memorandum of Understanding, dated 8th September, 1988 with M/s.Carlton Properties Private Limited (second purchaser). Disputes arose between the petitioner and Sardar Bhupender Singh Sethi and consequently petitioner had filed a suit for declaration being Suit No.2788 of 1989. The said suit is pending. Sardar Bhupender Singh Sethi had also filed a Suit against Mr.Damodar Gulabrai Belani and Shrichand Gulabrai Belani the (original Owners) for specific performance of the agreement for sale

and for conveyance of the property in question in favour of the petitioners. This Suit being suit No.2789 of 1989 is also pending. There were also disputes between the owners and the tenants occupying part of the property and the owners had filed suit against the tenants.

. As per the agreement of 11th June, 1993, the owners, Sardar Bhupender Singh Sethi and Sardar Harbans Singh Kohli were to receive totally a sum of Rs.1,55,00,000/-. Out of this Sardar Harbans Singh Kohli was to receive Rs.63,00,000/- and in addition according to the Petitioners, compensation in respect of five tenement which was to be mutually agreed between Sardar Harbans Singh Kohli and the second purchasers. Similarly, the owners were to receive free of cost an area of 1500 square feet each i.e. a total area of 3,000 square feet from the second purchaser.

8. Subsequent to the order dated 22nd September, 1993, the following claims were made before the Appropriate Authority. The Petitioner in W.P. No.2160 of 1993 Harbans Singh Kohli, one of the first purchasers, by his letter dated 22nd October, 1983 addressed to the Appropriate Authority made a demand in the sum of Rs.96,00,000/-.

Similarly, on behalf of Mr.Harbans Singh Kohli, one of the first purchasers, their counsel addressed a letter dated 27th October, 1993 to the Appropriate Authority to pay their clients compensation of Rs.96,00,000/- which the intending purchaser (second purchaser) had agreed to pay to their client as confirmed by letter dated 18th September, 1993 and which according to the Advocates had been forwarded to the Appropriate Authority by their clients letter dated 20th September, 1993.

. By their communication dated 15th October, 1993, the owners, and the second purchasers informed the Appropriate Authority without prejudice that regarding premises which have been vacated earlier, possession of the property cannot be handed over unless the Appropriate Authority agreed to pay a sum of Rs.96,00,000/- as agreed between the owners and second purchaser. This was signed on behalf of the owners as also second purchaser.

. One Harasiddh Corporation by the communication dated 26th October, 1993 addressed to the appropriate authority informed that they had entered into an agreement with Harbanssingh Kohli for purchase of the immovable property and that they had also filed Suit No.3849 of 1989 in the Court for

specific performance. They made a claim of Rs.85,50,000/-.

9. At the hearing of this petition on behalf of the petitioners in W.P. No.2507 of 1993, submissions have been advanced as to why the order stands abrogated which have been adopted by the petitioners in W.P. Nos.2157 of 1993 and 2160 of 1993. The submission is as under :

. As the acquisition order under Section 269 UD(1) was passed on 22nd September, 1993, the property vested in the Central Government in accordance with section 269 UE(1) from that date. Consequent to the order of acquisition, the Department on 25th October, 1993 took possession of the property. Under the provisions of section 269 UG(1), the Department by law was required to tender the apparent consideration by 31st October, 1993. The Central Government in accordance with clause 22 of the agreement setting the outer time limit for payment worked out the deferred value in the sum of Rs.1,37,62,560/- and the consideration payable by the Central Government is Rs.1,52,62,560/-. In the order of deposit dated 29th October, 1993, it was stated that the amount was deposited in terms of Section 269UG(3). In the affidavit filed by the

Central Government, in response to this Petition, it has been stated in para 26 that despite acquiring the property and taking possession of the property, the Appropriate Authority instead of tendering the apparent consideration to the persons entitled to, deposited the same in the Public Deposit Account inter alia on the reasoning that "the transferors had failed to fulfil and tender title deeds and other title documents".

. It is submitted that failure to pay the apparent consideration without there being any dispute by persons entitled to receive within the period specified under Section 269 UG(1), will render the acquisition order abrogated in accordance with the provisions of Section 269 UH(1). It is, therefore, submitted that this Court be pleased to declare the order of acquisition as abrogated and that the immovable property stands re-vested in the transferor in accordance with the provisions of Section 269 UH(2).

10. To answer the issue, we may make reference to some additional jurisdictional facts. Pursuant to the owners submitting application in Form No.37-I on 15th June, 1993, a notice was served by the appropriate authority on the owners, first and

second purchasers on 22nd August, 1993 to show cause why order should not be made in accordance with the provisions of Section 269-UD(1) of the Income Tax Act, 1961. The second purchaser by communication dated 18th September, 1993 informed the Appropriate Authority that there was no undervaluation and as such the notice served should be withdrawn. The Appropriate Authority by order dated 22nd September, 1993 passed an order for pre-emptive purchase under sub-section (1) of Section 269-UD of the Income Tax Act, 1961 and the same was communicated to the parties by communication dated 12th October, 1993. The second purchaser intimated that further steps should not be taken as the second purchaser proposed to move the Hon'ble High Court against said order. There is some correspondence which need not be adverted to. Suffice it to say that on 22nd October, 1993, possession of the property excluding the area occupied by nine tenants was taken.

11. The Appropriate Authority on 29th October, 1993 informed the owners and second purchasers as under :-

> "This is to inform you that the entire apparent consideration amounting to Rs.1,52,63,560/- (Rs.One Crore Fifty Two Lakh Sixty Three Thousand and Five Hundred Sixty only) has been deposited in the P.D. A/c. of the Appropriate Authority, Bombay on 29th October, 1993 as provided in Section

269-UG(3) of the Income Tax Act, 1961."

. In the order dated 22nd September, 1993 under sub-section (1A) of Section 269UD in the matter of payment of consideration, the order recorded as under :

> "The consideration payable by the Central Government will thus be Rs.1,52,62,560/- (Rupees One Crore Fifty Two Lakh Sixty Two Thousand Five Hundred Sixty only). This shall be payable to the parties after the conditions laid down in clause 11 of the agreement are satisfied."

12. The agreement entered into between the owners and the second purchasers to which the first purchasers were conforming parties, the total compensation agreed to be paid was Rs.1,55,00,000/- out of which the owners were to receive Rs.46,00,000/- (Rs.23,00,000/- to each of the owners), Sardar Bhupender Singh Sethi was to receive Rs.46,00,000/- and Sardar Harbans Singh Kohli was to receive Rs.63,00,000/-. This has to be seen in the context of demands made by the owners claiming an amount of Rs.96,00,000/-, the claim by Sardar Harbans Singh Kohli, one of the first purchasers also for a sum of Rs.96,00,000/- and the demand by Harasiddh Corporation claiming Rs.85,50,000/-. It is in this background that the issue as raised has to be considered.

13. The submission on behalf of the respondents is that the consideration was to be paid considering the terms of clause 11 of the agreement and as there was dispute amongst persons entitled to apparent consideration as to the amount they have to receive, consequently it was within the jurisdiction of the Appropriate Authority to have deposited the amount in terms of Section 269-UG.

14. We may now gainfully refer to the relevant provisions of Section 269-UG, which read as under :

> 269UG. (1) The amount of consideration payable in accordance with the provisions of section 269UF shall be tendered to the person or persons entitled thereto, within a period of one month from the end of the month in which the immovable property concerned becomes vested in the Central Government under sub-section (1), or, as the case may be, sub-section (6), of section 269UE:
>
> Provided .....
>
> (2) Notwithstanding anything contained in sub-section (1), if any dispute arises as to the apportionment of the amount of consideration amongst persons claiming to be entitled thereto, the Central Government shall deposit with the appropriate authority the amount of consideration required to be tendered under sub-section (1) within the period specified therein.
>
> (3) Notwithstanding anything contained in sub-section (1), if the person entitled to the amount of consideration does not consent to receive it, or if there is any dispute as to the title to receive the amount of consideration, the Central Government shall deposit with the appropriate authority the amount of consideration required to be tendered under

sub-section (1) within the period specified therein :

Provided that nothing herein contained shall affect the liability of any person who may receive the whole or any part of the amount of consideration for any immovable property vested in the Central Government under this Chapter to pay the same to the person lawfully entitled thereto.

. Since, we are discussing the issue we may also consider the relevant provisions of Section 269-UH, which read as under :

269UH. (1) If the Central Government fails to tender under sub-section (1) of section 269UG or deposit under sub-section (2) or sub-section (3) of the said section, the whole or any part of the amount of consideration required to be tendered or deposited thereunder within the period specified therein in respect of any immovable property which has vested in the Central Government under sub-section (1) or, as the case may be, sub-section (6) of section 269UE, the order to purchase the immovable property by the Central Government made under sub-section (1) of section 269UD shall stand abrogated and the immovable property shall stand re-vested in the transferor after the expiry of the aforesaid period :

Provided that where any dispute referred to in sub-section (2) or sub-section (3) of section 269UG is pending in any court for decision, the time taken by the court to pass a final order under the said sub-sections shall be excluded in computing the said period.

(2) Where an order made under sub-section (1) of section 269UD is abrogated and the immovable property re-vested in the transferor under sub-section (1), the appropriate authority shall make, as soon as may be, a declaration in writing to this effect and shall -

(a) deliver a copy of the declaration to the persons mentioned in sub-section (2) of section 269UD; and

(b) deliver or cause to be delivered possession of the immovable property back to the transferor, or, as the case may be, to such other person as was in possession of the property at the time of its vesting in the Central Government under section 269UE.

15. Petitioners case is that as the acquisition order under Section 269-UD(1) was passed on 22nd September, 1993 and consequent to the order of acquisition, possession was taken on 25th October, 1993, the Central Government by law, considering the provisions of Section 269-UG(1) had to tender the apparent consideration by 31st October, 1993. That was not done and instead the amount was deposited on 29th October, 1993 by the Appropriate Authority. Consequently, the order of acquisition stood abrogated.

16. On these facts, because, the amount was not offered to the persons entitled to receive it within the time stipulated, can it be said that the order of acquisition stands abrogated by virtue of Section 269-UH of the Income Tax Act, 1961.

17. Before we answer the issue, we may refer to the judgments cited at Bar on behalf of the

petitioners. In Union of India V/s. Dr.A.K. Garg & others reported in 256 I.T.R. 660, properties were acquired and the amount was tendered by the Central Government on 6th September, 1993. This tender was beyond the stipulated period under Section 269UG. The Supreme Court held that this would attract the wrath of Section 269UH of the Act resulting in abrogation of the purchase order. The defence of the department was that the amount had been deposited by the Appropriate Authority but there was no material to show that the same was offered or tendered to the parties concerned. Before the Apex Court, there was no issue that there was dispute as to who were entitled to receive consideration.

. Reliance was next placed on the judgment of Parasrampuria Estate Developers P. Ltd. & Another V/s. Members of Appropriate Authority & others reported in (2006) 282 ITR 110. One of the contentions urged was that the order stand abrogated as compensation was not tendered to the petitioners and the same had been deposited in the account of the Appropriate Authority. The reason for depositing was that the building was incomplete and, therefore, the amount had not been tendered to the petitioners. This Court held that having purchased

the flat under construction, it was not open to the Appropriate Authority to contend that there is no obligation to tender the apparent consideration till the flat is fully constructed. Neither was there any dispute as to the title to receive the apparent consideration, nor to the apportionment of the amount of consideration amongst persons claiming it.

. In Ashis Mukharjee V/s. Union of India and others, the apparent consideration was neither offered nor was any dispute raised regarding title to receive the same. The only contention urged was that a Writ Petition was filed against the order of pre-emptive purchase, the learned Patna High Court held that this would not amount to dispute regarding title.

. On the other hand on behalf of the respondents, learned counsel had relied on the judgment of the Andhra Pradesh High Court in the case of Sooni Rustom Mehta (Mrs) V/s. Appropriate Authority (Income Tax Department) reported in (1991) 190 ITR 290 (A.P.), where the Andhra Pradesh High Court had taken a view that challenging the order of pre-emptive purchase by itself would result in, there being dispute as to the title to receive it and as such the Appropriate Authority was entitled

to deposit the amount. The Patna High Court in Ashish Mukharjee (supra) did not agree with the said view.

. We may also refer to the judgment of the Supreme Court in Jayshree Rajendra Shroff & Ors. V/s. Appropriate Authority, Ahmedabad reported in JT 2002 (10) SC 259. The High Court refused the prayer for abrogation on the ground that one Advani had filed a suit claiming permanent injunction and as there was a possibility of Advani succeeding in the Suit if declared a tenant of the property in which event he would be a person interested. The Supreme Court held that this was irrelevant. We are of the opinion that a mere suit challenging the order of purchase cannot give rise to dispute not to offer the compensation to the person entitled. The dispute must be either to the title or apportionment of compensation. A mere challenge to an order of acquisition cannot be considered to be a dispute within the meaning of Section 269UG.

18. The question is, considering the order dated 22nd September, 1993, the operative part of which read as under,

> "The consideration payable by the Central Government is thus Rs.1,52,62,560/- (Rs.One

Crore Fifty Two Lakhs Sixty Two Thousand Five Hundred and Sixty only). This shall be payable to the parties after conditions laid down in clause (11) of the agreement are satisfied."

and the order of deposit whether refers to Section 269UG(3), can it be said that there was a dispute as to apportionment or title.

. We have already reproduced the order of deposit. In the matter of apportionment of amount of compensation, there was certainly a dispute. There were claims by three claimants. Firstly, between the owners and second purchases on one hand and Sardar Bhupender Singh Sethi. Secondly, between Sardar Bhupendar Singh Sethi and Sardar Harbans Singh Kohli. Thirdly, between Harasiddh Corporation and Harbans Singh Kohli. There were also suits filed by Sardar Bhupendersingh against Sardar Harbanssingh Kohli, as also two other suits, as set out earlier in the petitions. Some of these Suits were for specific performance for transfer of the property. In other words, there was also a dispute as to conveyance of the title. The agreement of 11th June, 1983 apart from setting out the consideration to be paid to each of the parties required under clause 11, settling of dues,

disputes, claims and withdrawal of the suits pending in Court. The order of pre-emptive purchase does not record any reason as to there being a dispute as to apportionment and/or as to title. It merely sets out that the compensation shall be payable to the parties after conditions laid down in clause 11 are satisfied. The conditions in clause 11, includes withdrawal of suits. The appropriate authority could have considered the said clause. The demands made by the various parties amongst other reasons were based on the suits filed by them. In these circumstances, was the Government bound to offer the compensation and if so to whom. In Mohinder Singh Gill & Another V/s. The Chief Election Commissioner, New Delhi & Others reported in 1998 (1) SCC 405, the Supreme Court laid down, that when a quasi judicial authority makes an order giving reasons or no reasons, it is not thereafter open for authorities to support the order by reasons either on affidavit or otherwise which are not found or discernible from the order.

19. The order of deposit dated 29th October, 1993 merely referred to Section 269-UG(3) of the Income Tax Act, 1961. Section 269-UG(3) speaks about dispute as to title to receive the apparent consideration. In the instant case, though in

respect of the title of the property on the date of the order, it was the owners who continued to hold title none the less there were suits pending including for specific performance. In other words, there were disputes as to in whose favour the property ought to be conveyed. Apart from that the owners, Sardar Harbans Singh Kohli and Harsiddh Corporation claimed various amounts, much more than the compensation worked out and deposited. Therefore, there was clearly also a dispute as to the apportionment. If the case of department does not fall under Section 269-UG(3), it would fall under Section 269-UG(2). Once there be a provision and power, merely because a wrong Section is quoted or not quoted, in our opinion, cannot result in abrogating the order of purchase.

20. On the facts of present case, we are, therefore, clearly of the opinion that the impugned order does not suffer from any infirmity nor the order of deposit from any illegality. The reliefs prayed for by the petitioners, in each of the petitions, based on the arguments advanced cannot be granted, as the order of pre-emptive purchase does not stand abrogated.

21. In the light of that, Rule discharged in

each of the three petitions. There shall, however, be no order as to costs.

(F.I. REBELLO, J.)

(J.P. DEVADHAR, J.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2507 OF 1993

Damodar Gulabrai Belani & anr. .. Petitioners.
V/s.
S.C. Prasad & Others .. Respondents.

Mr.Poras Kaka with Mr.Sanjiv Ahuja for the petitioners.

Mr.R. Ashokan for respondent Nos.1 to 3.

Mr.J.D. Mistry with Mr.Bhavik Mehta i/by Dhruve Liladhar & Co. for respondent No.5.

Mr.Jitendra Jain i/by S. Satpute for respondent No.7.

WITH
WRIT PETITION NO.2157 OF 1993

Carlton Properties Pvt.Ltd
& Another .. Petitioners.
V/s.
S.C. Prasad & Others .. Respondents.

Mr.J.D. Mistry with Mr.Bhavik Mehta i/by Dhruv Liladhar & Co. for the petitioner.

Mr.Poras Kaka with Sanjiv Ahuja fr respndent Ns.5(i) & (ii).

Mr.R. Askan for respondent Nos.1 to 3.

Mr.Jitendra Jain i/by Shaunak Satpute for respondent No.7.

WITH
WRIT PETITION NO.2160 OF 1993

Sardar Harbans Singh Kohli .. Petitioner.
V/s.
S.C. Prasad & Others .. Respondents.

Mr.Porus Kaka with Sanjiv Ahuja for the petitioner.

Mr.J.D. Mistry with Mr.Bhavik Mehta i/by Dhruv Liladhar & Co. for respondent No.8.

Mr.R. Ashokan for respondent Nos.1 to 3.

Mr.Jitendra Jain i/by Shaunak Satpute & Co. for

respondent No.7.

CORAM : F.I. REBELLO &
J.P. DEVADHAR, JJ.

RESERVED ON : 22ND AUGUST, 2007.
PRONOUNCED ON : 18TH OCTOBER, 2007.

For the reasons recorded separately, following order is passed.

P.C. :

1. On the facts of present case, we are, therefore, clearly of the opinion that the impugned order does not suffer from any infirmity nor the order of deposit from any illegality. The reliefs prayed for by the petitioners, in each of the petitions, based on the arguments advanced cannot be granted, as the order of pre-emptive purchase does not stand abrogated.

2. In the light of that, Rule discharged in each of the three petitions. There shall, however, be no order as to costs.

sd/-

(F.I. REBELLO, J.)

sd/-

(J.P. DEVADHAR, J.)